

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 582 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MOHANLAL DAHYABHAI RATHOD

Versus

VILASINI RAMCHANDRAN OR HIS SUCCESSOR

Appearance:

MR DHIRENDRA MEHTA for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
M/S MG DOSHIT & CO for Respondent No. 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 21/03/2000

ORAL JUDGEMENT

The petitioner has moved this Court by filing this Special Civil Application under Article 226 of the Constitution of India challenging the orders at Annexure 'F' and 'H', namely: holding inquiry and suspending the

petitioner.

2. Short facts which are required to be stated are as under:

2.1 The petitioner was working as a Junior Clerk in District Panchayat. He was looking after the maintenance of accounts. It is specifically stated in the order at Annexure 'F' that the petitioner was required to prepare accounts to pay bills, to deduct the amount from the salary and was required to prepare and indicate in the Annexure. He was required to deduct the amount and to deposit the same with the Treasury. It was his duty to make the payment to the employees. He was required to maintain books of accounts, check books, record with regard to income, cash book and cash. On or about 12.5.1978, the Accounts Officer submitted his report indicating that the petitioner has, though deducted the amount, has not deposited the same in the Treasury. During August 1977 to February 1978, amount of Rs.6618-77 was deducted by the petitioner and by not depositing the same before the Treasury, he has committed irregularities. In Annexure 'F' further details are given with regard to the act and omissions attributed to the petitioner.

3. Vide Annexure 'H', the petitioner came to be suspended as a complaint was filed before the police on 31.8.1984 for misappropriation. Learned Advocate appearing for the petitioner submitted that initially, First Information Report (for short, FIR) was lodged before the Uchal police station by Taluka Development Officer on 19.1.1979. It is in view of this filing of the prosecution the petitioner was suspended by order dated 20.1.1979 which was served on 17.2.1979. Learned advocate submitted that the trial Court acquitted the accused, vide Annexure 'C' on 26.2.1980. Thereafter he requested for reinstatement and by order dated 16.4.1984, he was reinstated as Junior Clerk. Thus, the grievance made is that for the period during which he had undergone suspension should have been taken into consideration by the respondent and salary and other benefits ought to have been given which he was otherwise entitled to get.

4. In this matter it appears that as charge sheet with regard to the items for which criminal prosecution was filed was served on the petitioner on 8.9.1982 by the Department to which a reply was given by the petitioner, vide Annexure 'E' on 3.11.1982. It appears that during the pendency of this, he was promoted as Senior Clerk on 19.8.1983. It is thereafter the District Development

Officer took the decision to hold an inquiry, vide Annexure 'F'. Prima facie he was satisfied that it is a fit case wherein inquiry should be held. On 31.8.1984 one Dr. Munir lodged a criminal complaint, and as a result of it, the petitioner came to be suspended on 19.12.1984. Under this circumstances, the petitioner approached the Court and obtained the order restraining the District Development Officer to hold an inquiry. He also obtained an order of suspending the suspension order. Thus, it appears that the petitioner, in view of the judgment delivered by the criminal court, came out with a version that now he cannot be suspended. It is required to be noted that even if the person is tried for charges of having committed an offence by a competent Court, yet it is open for the department to conduct an inquiry and to arrive at a finding on the basis of material placed before it. In the instant case, in view of the order obtained by the petitioner, the Department could not proceed with the inquiry. If he would have obtained an order staying the suspension order, the matter would have been different.

5. Without examining the matter on merits, learned advocate submitted that if a direction is given to complete departmental inquiry within a specific period, ends of justice would be met with. He stated that the order of suspension should be stayed till the result of inquiry. Under the circumstances, it is directed that the departmental proceedings shall be concluded within a period of six months from the date of receipt of the writ. If by any chance the departmental proceedings could not be completed within that period, then it will be the responsibility of the District Development Officer to move the Court, for extension of time, with an explanation for not completing the proceedings within the aforesaid time. Looking to the delay and more particular the fact that the petitioner is promoted, at this stage this Court is of the view that the order of suspension should be continued to be suspended. However, on inquiry being concluded or the prosecution resulting against the petitioner, it will be open for the Department to take appropriate action and this order would not come in the way of the Department.

6. This petition stands partly allowed. Rule made absolute accordingly, with no order as to costs.

csm./ (B.C. PATEL, J.)